

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KENNETH AND BETTY LAMBRECHT,

Petitioners,

v.

IN RE THE INTEREST OF S.M.H.,

Respondent.

NO. 10-5680 RJB

ORDER REMANDING CASE

This matter comes before the Court on Petitioners' petition for removal (Dkt. 1). The Court has reviewed the petition and supporting documentation *sua sponte* to determine whether the matter was properly removed.

**PROCEDURAL AND FACTUAL BACKGROUND**

On September 22, 2010, Petitioners filed a petition of removal. Dkt. 1. This petition was apparently unaccompanied with payment for the filing fee. *Id.* In their petition for removal, Petitioners outline the apparent circumstances surrounding their attempted adoption of a minor child, S.M.H. *Id.*

In support of their petition for removal, Petitioners include a "Notice of Pre-Emptive Constitutional Challenge to the Unlawful Discrimination of Separate Racial Classes via *Georgia v. Rachel*." Dkt. 1-4. In this notice and in their petition, Petitioners assert that the Court has jurisdiction to hear their claims pursuant to 28 U.S.C. § 1443. Dkt. 1-4, at 2. Petitioners state

1 that although “their skin colors are white” and that “there is no racial discrimination component  
2 in this case,” § 1443 nonetheless remains “a perfect basis for removal to federal court” because  
3 the statute ensures the protection of “basic civil rights.” Dkt. 1-4, at 2-4. On September 27,  
4 2010, Petitioners filed several additional pleadings. Dkts. 2-5.

### 5 **DISCUSSION**

6 Filing Fee. As a preliminary matter, the Court can find no record that Petitioners paid the  
7 \$350 filing fee necessary for instituting a removal action in federal court. *See* 28 U.S.C. §  
8 1914(b). In the absence of the required fee, adjudication of Petitioners’ case on the merits is  
9 improper at this time.

10 Removal via § 1443. Even if Petitioners were to pay the filing fee, Petitioners have not  
11 shown that they can properly remove their case to federal court. Petitioners’ petition for removal  
12 and supporting documentation fails to establish that this Court has subject matter jurisdiction  
13 over Petitioners’ case. Jurisdiction is a threshold issue that must be raised *sua sponte*. *Steel Co.*  
14 *v. Citizens for a Better Environment*, 523 U.S. 83, 94-95 (1998).

15 Federal removal jurisdiction is statutory in nature, and the governing statutes are to be  
16 strictly construed. *Shamrock Oil & Gas v. Sheets*, 313 U.S. 100, 108-09; *see Merrell Dow*  
17 *Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 814 (1986). 28 U.S.C. § 1441 provides that a  
18 state case “may be removed *by the defendant or the defendants*...to the district court of the  
19 United States for the district and division embracing the place where such action is pending.”  
20 (emphasis added). Here, Petitioners are not the defendants in the removed state court action but  
21 the applicants of a “Petition for Adoption” to which the Washington State Department of Social  
22 and Health Services did not consent. Dkt. 1, at 18.

23  
24 However, even if Petitioners could satisfy the requirements of § 1441, contrary to  
25 Petitioners’ claims 28 U.S.C. § 1443 does not provide a jurisdictional basis for removal of this  
26 matter. Section 1443 provides that a Defendant may remove from the state court any action  
“[a]gainst any person who is denied or cannot enforce in the courts of such State a right under

1 any law providing for the equal civil rights of citizens of the United States, or of all persons  
2 within the jurisdiction thereof.” 28 U.S.C. § 1443(1). There are two components to removal  
3 jurisdiction under § 1443(1): (1) the right must arise under a federal law providing for equal  
4 rights; and (2) the removing party must be unable to enforce that right in state court. *See*  
5 *Johnson v. Mississippi*, 421 U.S. 213, 219-20 (1975); *California v. Sandoval*, 434 F.2d 635, 636  
6 (9th Cir.1970) (per curiam).

7 First, the right that Petitioners assert is not under “any law providing for...equal civil  
8 rights.” In *Georgia v. Rachel*, the Supreme Court held that this phrase “must be construed to  
9 mean any law providing for specific civil rights stated in terms of racial equality.” 384 U.S. 780,  
10 792 (1996). Petitioners concede that “there is no racial discrimination component” in this case.  
11 Dkt. 1-4, at 3. Therefore, § 1443 cannot form the basis for jurisdiction in this case.

12 Second, Petitioners claim in their petition and supporting documentation that removal  
13 under § 1443 is proper in order to protect Petitioners’ “well established Liberty, Privacy and  
14 Property Interests.” Dkt. 1-4, at 3. The Court in *Rachel*, however, expressly rejected the  
15 argument that the language of § 1443(1) encompasses such general rights arising under the Due  
16 Process Clause of the Fourteenth Amendment. The Court explained that “because the guarantees  
17 of those clauses are phrased in terms of general application available to all persons or citizens,  
18 rather than in the specific language of racial equality that § 1443 demands,” such rights cannot  
19 form a basis for jurisdiction under § 1443. *Rachel*, 384 U.S. at 792. As the Eight Circuit  
20 subsequently explained, “[§] 1443 applies only to denials of specific rights of racial equality and  
21 not to the whole gamut of constitutional rights.” *United States ex rel. Sullivan v. Missouri*, 588  
22 F.2d 579, 580 (8<sup>th</sup> Cir. 1978) (per curiam).

23 Third, Petitioners’ petition for removal does not show that Petitioners are denied or  
24 cannot enforce their rights in state court. *See City of Greenwood v. Peacock*, 384 U.S. 808, 827-  
25 28 (1966); *Sandoval*, 434 F.2d at 636 (“Petitioners must assert that the state courts will not  
26 enforce that right, and that allegation must be supported by reference to a state statute or a

1 constitutional provision that purports to command the state courts to ignore the federal rights.”).

2 Fourth, Petitioners urge the Court to ignore *Georgia v. Rachel* and its progeny and “retain  
3 inherent jurisdiction over basic federal questions of Liberty, Privacy and Property Interests”  
4 because to do otherwise would be to “elevate the basic civil rights in racial equality above the  
5 basic civil rights in Liberty, Privacy and Property Interests.” Dkt. 1-4, at 4. The Court, however,  
6 must follow the interpretation of 28 U.S.C. § 1443 promulgated by the United States Supreme  
7 Court and the Ninth Circuit. The Court also notes that at least three other District Courts have  
8 reached the same conclusion regarding removal under § 1443 after encountering substantially  
9 identical pleadings. *See Rice v. Rice*, No. 10-2002, 2010 WL 2090088 (D. Minn. May 21, 2010);  
10 *Brum v. County of Wood, W. Va.*, No. 6:07-cv-00405, 2008 WL 3094586 (D. S.D. W. Va. Aug.  
11 4, 2008); *Indiana v. Helman*, No. 1:08-CR-48-TS, 2008 WL 2356732 (D. N.D. Ind. Jun. 5,  
12 2008).

13 Other bases of subject matter jurisdiction. Finally, Petitioners’ petition for removal does  
14 reference, in passing, 42 U.S.C. § 1983 and 28 U.S.C. § 1331. Dkt. 1, at 2. However, to the  
15 extent that Petitioners’ could raise a federal question under § 1983, adjudication of those claims  
16 by a federal district court at this time is improper as a de facto appeal pursuant to the *Rooker-*  
17 *Feldman* doctrine. *See Noel v. Hall*, 348 F.3d 1148 (9<sup>th</sup> Cir. 2003) (“Once a federal plaintiff  
18 seeks to bring a forbidden de facto appeal,...that federal plaintiff may not seek to litigate an issue  
19 that is “inextricably intertwined” with the state court judicial decision from which the forbidden  
20 de facto appeal is brought.”).

21 Because Petitioners have not properly removed their case and because this Court lacks  
22 subject matter jurisdiction to hear Petitioners’ claims, this case should be remanded to the Clark  
23 County Superior Court pursuant to 28 U.S.C. § 1447(c) without consideration of Petitioners’  
24 additional pleadings.  
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1 Therefore, it is hereby **ORDERED** that this matter is **REMANDED** to the Clark County  
2 Superior Court.

3 DATED this 29th day of September, 2010.

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6 ROBERT J. BRYAN  
7 United States District Judge  
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